

Serial No. 10/711,488
Filed: 09/21/04
Page 9 of 16

Examiner: Frederick C. Nicolas
Group Art Unit: 3754

REMARKS/ARGUMENTS

By the present amendment, claims 1 and 3-7 have been cancelled. Claims 2, 8, 9, 11, 13, 21-23, 25-28, and 30 have been amended. New claims 32-39 have been added. No new matter has been added to the claims. Applicants believe that the claims are fully supported by the specification as filed. In particular, the amendments to the claims can be found in paragraphs 46 and 47 of the application as filed as well as the corresponding drawings to which these paragraphs refer. The amendments to the claims are made for the purposes of clarity and to more clearly point out Applicants' invention and the distinctions of the Applicants' invention over the prior art.

In the Office Action, the Examiner required restriction between Species A: Figs. 1-3, and Species B: Figs. 4-9. Applicants traverse the requirement for election of a disclosed species because Applicants believe that there are claims present which cover both embodiments of the invention. In any case, Applicants confirm the election of Species B: Figs. 4-9. All of the claims in the application read on Species B: Figs. 4-9.

Claim Rejections – 35 U.S.C. § 102

Claims 1, 6-13, 20-21, 23-26 have been rejected under 35 U.S.C. § 102(b) as being anticipated by the Kennedy et al. U.S. Patent No. 3,236,457 (Kennedy et al. '457). This rejection is respectfully traversed.

The Kennedy et al. '457 patent discloses a composite spray container assembly that includes two separate aerosol containers that are mounted to a handle which has a wall. The contents of the containers are dispensed through a common dispenser which is connected to the outlets for each of the aerosol containers. A single dispensing outlet is illustrated in FIG. 3 to mix the contents of each of the aerosol containers prior to dispensing. A trigger mechanism includes a trigger arm 71 having a forward portion that extends through an opening 73 in a fulcrum plate 74 that is attached to a frame 61 so that when a thumb piece portion 76 of the trigger arm is depressed, the trigger will pivot with respect to the fulcrum plate 74 and the dispensing body 64 will be moved downwardly to depress the upwardly projecting tubes 57 and

Serial No. 10/711,488
Filed: 09/21/04
Page 10 of 16

Examiner: Frederick C. Nicolas
Group Art Unit: 3754

release the fluid in the two containers. The dispenser body 64 dispenses the fluid perpendicular to a plane that includes longitudinal axes of the two containers. The handle 62 is mounted to the frame 61 between the two containers and projects rearwardly of the container assembly, opposite the dispensing openings in the dispensing body 64.

Claims 1, 6 and 7 have been cancelled and the rejection of these claims is therefore moot. Claim 8 is an independent claim which defines over Kennedy et al. '457 patent in calling for a dispensing tube fluidly connected to each of the first and second dispensing outlets and including a dispensing orifice lying within the common plane (of the first and second longitudinal axis of the two fluid containers) and adapted to dispense a fluid in a direction along the common plane. This concept is not disclosed in Kennedy et al. '457 patent.

Claims 9-22 depend directly or indirectly from claim 8 and distinguish over the Kennedy et al. '457 reference in the same manner as claim 8. In addition, claim 9 calls for a portion of a handle to be parallel to the first and second longitudinal axes and lie substantially in the common plane. This feature is also not disclosed in the Kennedy et al. '457 patent.

Claim 10 further defines over the Kennedy et al. '457 patent in calling for an integrally molded actuator body that includes the actuator which is resiliently cantilevered from a portion of the actuator body. This feature is not disclosed in Kennedy et al. '457.

Claim 11 further defines over the Kennedy et al. '457 patent in calling for the dispensing tube to further include a channel within the common plane (of the first and second axes of the two containers) and between the first and second dispensing outlets and the dispensing orifice. No such channel is disclosed in Kennedy et al. '457.

Claim 12 depends from claim 11 and defines further over Kennedy et al. '457 in the same manner as claim 11 and further defines the dispensing tube as resting on the first and second valves. This structure is not disclosed in Kennedy et al. '457.

Claim 13 further defines over Kennedy et al. '457 in defining the dispensing orifice as positioned at one side of the first container distal from a second container and the handle is positioned at a distal side of the second container opposite the dispensing orifice. This concept is not disclosed in Kennedy et al. '457.

Serial No. 10/711,488
Filed: 09/21/04
Page 11 of 16

Examiner: Frederick C. Nicolas
Group Art Unit: 3754

Claim 21 further defines over the Kennedy et al. '457 patent in calling for a portion of the handle to be parallel to the first and second longitudinal axis and lying within a common plane thereof. This concept is not disclosed in Kennedy et al. '457.

Claim 23 is an independent claim which defines over Kennedy et al. '457 in calling for an actuator including an integrally molded actuator body mounted to an upper portion of a wall that mounts the first and second containers and including an actuator finger that is resiliently cantilevered from a portion of the actuator body and is adapted to depress each of the first and second valves for simultaneously opening each of the first and second valves. This concept is not disclosed in Kennedy et al. '457. Whereas Kennedy et al. discloses what might be called an actuating finger, it is not cantilevered from an integrally formed actuator body that is mounted to an upper portion of the wall which mounts the two containers.

Claims 24-26 depend from claim 23 and define over the Kennedy et al. '457 patent in the same fashion as claim 23. In addition, claim 24 calls for the first and second containers to have respective first and second longitudinal axes lying in a common plane and the dispensing orifice lies within the common plane and is adapted to dispense fluid along the common plane. This concept is not disclosed in Kennedy et al. '457.

Claim 26 has been amended to depend from claim 24 and further defines over Kennedy et al. '457 in defining the handle as mounted to a wall in a position that lies within the common plane of the first and second longitudinal axes of the first and second containers, respectively. This feature is not disclosed in Kennedy et al. '457.

Claim 25 is dependent on claim 23 and further defines over Kennedy et al. '457 in that it calls for a dispensing tube that rests on the first and second valves and the actuator finger is positioned above the dispensing tube to depress the dispensing tube and thereby open the first and second valves. Kennedy et al. '457 has no such dispensing tube and further does not have an actuator finger mounted above the dispensing tube for depressing the valves.

In view of the foregoing, it is apparent that claims 8-13, 20-21 and 23-26 are not anticipated under 35 U.S.C. § 102(b) by the Kennedy et al. '457 reference.

Serial No. 10/711,488
Filed: 09/21/04
Page 12 of 16

Examiner: Frederick C. Nicolas
Group Art Unit: 3754

Claim Rejections – 35 U.S.C. § 103

Claims 3 and 14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Kennedy et al. '457 reference in view of Markey et al. U.S. Patent No. 6,082,588 (Markey et al. '588). This rejection is respectfully traversed.

The Kennedy et al. '457 patent has been discussed above and is lacking in significant features with respect to claim 8 from which claim 14 depends. Claim 3 has been cancelled. The Markey et al. '588 patent has been cited to teach the use of two containers where the two containers are joined together with an adhesive.

The alleged combination of Markey et al. '588 and Kennedy et al. '457 is traversed. There is no basis for the combination. There is no suggestion in either of the references that would warrant there combination.

However, even if the references were combined, as alleged, they still would not meet Applicants invention of claim 14. Claim 14 depends from claim 8 and defines over the alleged combination in the same fashion that claim 8 defines over the Kennedy et al. '588 patent. See discussion above with respect to claim 8. It is thus believed that claim 14 patentably defines over any alleged combination of Kennedy et al. '457 and Markey et al. '588.

Claims 4, 5, 15, and 16 have been rejected under 35 U.S.C. § 103 as being unpatentable over Kennedy et al. '457 in view of Marrelli et al. U.S. Patent No. 5,779,035 (Marrelli et al. '035). This rejection is respectfully traversed.

The Kennedy et al. '457 patent has been discussed above and, contrary to the Examiner's representation, does not teach all of the features of the claimed invention with the exception that the two containers are joined together with a thin film that is wrapped around them. See discussion above with respect to claim 8. Claims 4 and 5 have been cancelled and claims 15 and 16 depend from claim 8.

The Marrelli et al. '035 reference has been cited to teach the use of a transparent thin film wrapped around a few containers. The Marrelli et al. '035 patent relates to a reusable container which is used to ship garbage bags. There is nothing remotely relating to the reusable containers of Marrelli et al. '035 and the aerosol dispenser of Kennedy et al. '457. There is no suggestion in

Serial No. 10/711,488
Filed: 09/21/04
Page 13 of 16

Examiner: Frederick C. Nicolas
Group Art Unit: 3754

Kennedy et al. '457 of the need to tie together the two containers more securely than has been done by the frame 61 that mounts the handle and mounts the two containers.

The alleged combination of Kennedy et al. '457 and Marrelli et al. '035 is traversed. There is no basis for making the alleged combination. There is no teaching or suggestion in either of the references that would warrant the combination.

However, even if the alleged combination of Kennedy et al. '457 and Marrelli et al. '035 were to be made, however untenably, it still would not reach Applicants' claimed invention. Claims 15 and 16 depend from claim 8 and define over any alleged combination of Kennedy et al. '457 and Marelli et al. '035 in the same manner as claim 8. Applicants incorporate herein by reference the discussion above with respect to the distinctions of claim 8 over the Kennedy et al. '457 patent and submit that these distinctions define over any alleged combination of Kennedy et al. '457 and Marrelli et al. '035.

In view of the foregoing, it is evident that claims 15 and 16 are not patentable under 35 U.S.C. § 103(a) over Kennedy et al. '457 and Marrelli '035.

Claims 17-19 and 27-29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kennedy et al. '457 in view of the Reed et al. U.S. Patent No. 4,449,647. This rejection is respectfully traversed.

The Kennedy et al. '457 reference has been discussed above and does not disclose the claimed features represented by the Examiner. The Reed et al. '647 patent has been cited to show a lock for selectively preventing an actuator from operating dispenser in an aerosol container.

The alleged combination of Kennedy et al. '457 and Reed et al. '647 is traversed. There is no basis for making the alleged combination. There is no suggestion of how one would place a lock in the Kennedy et al. '457 device to prevent actuation of the aerosol. Kennedy et al. '457 discloses no need for such a lock.

Even if the alleged combination of Kennedy et al. '457 and Reed et al. '647 were made, however untenably, it still would not reach Applicants' claimed invention. Claims 17-19 depend from claim 8 and define over the alleged combination of Kennedy et al. '457 and Reed '647 in

Serial No. 10/711,488
Filed: 09/21/04
Page 14 of 16

Examiner: Frederick C. Nicolas
Group Art Unit: 3754

the same fashion as claim 8. Applicants incorporate by reference the discussions above with respect to the distinctions of claim 8 over the Kennedy et al. '457 patent.

In addition, claims 27-29 depend from claim 23 and define over the alleged combination of Kennedy et al. '457 and Reed et al. '647 in the same fashion as claim 23. Applicants incorporate by reference Applicants' discussion above with respect to the distinctions of claim 23 over Kennedy et al. '457.

In view of the foregoing, it is clear that claims 17-19 and 27-29 are not unpatentable under 35 U.S.C. § 103(a) over the Kennedy et al. '457 and Reed et al. '647 references.

Claim 22 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kennedy et al. '457 in view of Breslau et al. U.S. Patent No. 3,303,970. This rejection is respectfully traversed.

The Kennedy et al. '457 patent has been discussed above and does not teach all of the features claimed in claim 22 except for the snap fit relationship between the containers and the dispenser as the Examiner has alleged. Claim 22 depends from claim 8 and defines over Kennedy et al. '457 at least in the same fashion as claim 8 in the manner discussed above.

The Breslau et al. 970 patent discloses the use of a dispenser having two containers wherein the containers can be snap fit into a dispenser. The alleged combination of Kennedy et al. '457 with Breslau et al. '970 is traversed. There is no basis for making the alleged combination. Actually, the Breslau et al. '970 mounting of the containers in the holders are much the same as those disclosed in Kennedy et al. '457. There is no disclosure in Breslau et al. '970 as to how the containers in Breslau et al. '970 would be snap fit into the Breslau et al. '970 holders. Thus, there is no enabling disclosure in either Breslau et al. '970 or Kennedy et al. '457 as to how the snap fit mounting of a dispenser to aerosol containers could be accomplished.

However, even if the alleged combination of Kennedy et al. '457 and Breslau et al. '970 could be made, however untenably, it still would not reach Applicants claimed invention. The alleged combination of Kennedy et al. '457 and Breslau et al. '970 would simply mount the Kennedy et al. '457 containers on a snap fit frame. The structure would not meet the limitations of claim 8, from which claim 22 depends. Applicants reiterate and incorporate by reference the

Serial No. 10/711,488
Filed: 09/21/04
Page 15 of 16

Examiner: Frederick C. Nicolas
Group Art Unit: 3754

discussion above with respect to the distinctions of claim 8 over Kennedy et al. '457. It is therefore believed that claim 22 is not unpatentable under 35 U.S.C. § 103(a) over Kennedy et al. '457 in view of Breslau et al. '970.

Finally, claims 30-31 have been rejected 35 U.S.C. § 103(a) as being unpatentable over Kennedy et al. '457 in view of the Abplanalp U.S. Patent No. 6,062,493 (Abplanalp '493). This rejection is respectfully traversed.

The Kennedy et al. '457 patent has been discussed above and, contrary to the Examiner's representation, it does not teach all of the features of the claimed invention except the elongated filler within the dispensing tube.

The Abplanalp '493 patent discloses a sprayer for liquid nozzle insert in which an aerosol container is coupled to a fluid container through a dispensing valve that has a Venturi nozzle for siphoning liquid out of the fluid container as the aerosol is dispensed. Contrary to the Examiner's representations, Abplanalp '493 does not disclose an elongated filler having a plug in the dispensing orifice to assist mixing.

The alleged combination of Kennedy et al. '457 and Abplanalp '493 is traversed. There is no basis for making the alleged combination. There is no suggestion or teaching in either of the references which would suggest that the Venturi valve of Abplanalp '493 could be incorporated into the Kennedy et al. '457 reference. There would be reason to do so because Kennedy et al. '457 discloses two aerosol containers, neither of which need a siphon. It would further appear that incorporation of a Venturi valve in the outlet dispensing opening of Kennedy et al. '457 would not perform the function of either mixing or siphoning liquid from either containers. Thus, the alleged combination of Abplanalp '493 and Kennedy et al. '457 is believed inappropriate.

However, even if the alleged combination of Kennedy et al. '457 and Abplanalp '493 were to be made, however untenably, it still would not reach Applicants' claimed invention. Claims 30 and 31 depend from claim 30 and define over the alleged combination of references in the same fashion as claim 23. The deficiencies which are present in Kennedy et al. '457 with respect to claim 23 are not supplied by the alleged combination of Abplanalp '493 and Kennedy

Serial No. 10/711,488
Filed: 09/21/04
Page 16 of 16

Examiner: Frederick C. Nicolas
Group Art Unit: 3754

et al. '457. Applicants reiterate their arguments with respect to the distinctions of claim 23 over Kennedy et al. '457 and incorporate the same herein by reference.

Further, claim 30 calls for an elongated filler along the length of a dispensing tube to decrease the effective cross sectional area of the interior of the dispensing tube. The alleged combination of Kennedy et al. '457 and Abplanalp '493 would not meet this limitation.

In view of the foregoing, it is submitted that claims 30 and 31 patentably define over any alleged combination of Kennedy et al. '457 and Abplanalp '493.

New claims 32-39 have been added to give Applicants more complete protection for their invention. These claims have been carefully drawn to define over all of the references, either singularly or in combination.

In view of the foregoing remarks and amendments, it is submitted that the claims are in condition for allowance. Early notification of allowability is respectfully requested.

If the Examiner believes that there are still some unresolved issues in this application, the courtesy of a telephone interview to discuss these matters would be most appreciated.

Respectfully submitted,

ERIC J. HANSEN ET AL.

Dated: 8.25.05

By: 

John E. McGarry, Reg. No. 22,360
MCGARRY BAIR PC
171 Monroe Avenue, NW, Suite 600
Grand Rapids, Michigan 49503
616-742-3500

G0047704.DOC